

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.462 OF 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 28-03-2006, passed by the Additional Metropolitan Sessions Judge for the trial of Communal Offence Cases-cum-VII Additional MSJ Court, Red Hills, Hyderabad, whereunder and whereby the conviction of the accused was confirmed for the offence punishable under Section 379 of the Indian Penal Code (for short, 'I.P.C')

2. The revision petitioners herein are accused in C.C.No.8 of 2006, whereas respondent is the State. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The case of the prosecution in brief is that on 09.09.2004 at about 9.45 hours P.W.1 gave a report to the police, Charminar, stating that on the same day at about 1.30 hours he went to Miskin hotel in his passenger Auto bearing No.AP 11 U 9264 to have dinner. After return, he found his auto 200 yards away towards High Court road. Then he followed the auto on a scooter. At the same time, the culprits dashed the auto to an electric pole and there were two persons in the auto. One person received simple injuries and auto was fully damaged. Therefore, P.W.1 requested the police to take necessary action against the culprits, who committed theft of his auto. After receiving the report, the Sub-Inspector of Police, Charminar Police Station, registered a

case in Crime No.187 of 2004 under Section 379 I.P.C. and issued F.I.R. During the course of investigation, the investigating officer visited the scene of offence, recorded the statements of witnesses and conducted scene of offence-cum-recovery panchanama in the presence of mediators and also seized the auto belonging to the complainant. After completion of investigation, the investigating officer filed charge sheet into the Court.

4. The learned Judicial Magistrate of First Class took cognizance of the case and framed charges for the offence punishable under Section 379 or 411 of I.P.C against the accused. During the trial, on behalf of the prosecution, PWs.1 to 4 were examined and Exs.P1 to P4 and MO1 were got marked.

5. After closure of prosecution evidence, accused were examined under Section 313 Cr.P.C putting the incriminatory material deposed against them. The Accused denied the incriminatory material and reported no oral or documentary evidence.

6. The trial Court after considering the oral and documentary evidence, convicted the accused for the offence punishable under Section 379 I.P.C. and sentenced them to undergo Simple Imprisonment for one year and a fine of Rs.3,000/- in default Simple Imprisonment for three months.

7. Aggrieved by the judgment of the trial Court, the accused preferred Criminal Appeal No.42 of 2007 on the file of Additional Metropolitan Sessions Judge for the trial of Communal Offence Cases-cum-VII Additional MSJ Court, Red Hills, Hyderabad. The appellate Court after considering the evidence on record, dismissed the appeal and confirmed the judgment of the trial Court

vide its judgment dated 28.03.2006.

8. Aggrieved by the judgment of the appellate Court, the accused preferred the present revision.

9. The learned counsel appearing for the revision petitioners/accused argued that the accused are aged about 23 and 24 years and they were already in jail for 25 days, they are innocent and they have not involved in any crime prior to the alleged incident and prayed the Court to take lenient view, as they were having old age parents and small family.

10. On the other hand, learned Public Prosecutor argued that both the trial Court and the appellate Court considered the evidence on record and clearly held that the accused committed the offence under Section 379 I.P.C and the findings of both the Courts need no interference.

11. Now, the point for determination is “Whether the petitioners are entitled for acquittal?”

12. **P O I N T**: A perusal of the evidence produced by the prosecution shows that P.W.1 is the complainant who gave complaint to the police under Ex.P1 stating that on 09.09.2004 at 1.30 a.m. his auto was stolen. Later on, he found his auto being taken by the petitioners and he followed and caught them. Meanwhile, they dashed the auto against an electric pole, due to which his auto was damaged heavily. P.W.2 is the mediator for recovery of auto and in his presence, the police conducted panchanama under Ex.P2. But he failed to identify the accused, as such he was declared as hostile. The other witnesses produced by the prosecution are P.W.3 and P.W.4., who are panch witnesses also failed to identify the accused. The only evidence

for the prosecution is the investigating officer, who examined as P.W.4. He stated about receiving the compliant from P.W.1 and recording the statement of witnesses and recovery of auto from the accused in the presence of P.Ws 2 and 3. But both the Courts after perusing the evidence of P.W.1, who caught A1 and A2 redhandedly, convicted the petitioner under Section 379 I.P.C. and sentenced him to undergo punishment.

13. The contention of the learned counsel for the petitioners is that the petitioners already undergone one month imprisonment; that they have to maintain their old parents; that they are the sole bread winners to their family and that the petitioners being poor people, paid Rs.3,000/- to the defacto complainant towards damages to the auto, and hence, lenient view may be taken. This fact is not disputed by the prosecution.

14. In view of the facts and circumstances of the case, the sentence of Simple Imprisonment is modified by reducing the same from one year to one month. The fine amount remains unaltered. The period of imprisonment already suffered by the revision petitioner is directed to be set off under Section 428 Cr.P.C.

15. Accordingly, the Criminal Revision Case is allowed in part.

16. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

**ANIS,
J**

20-02-2015
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